

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

THERESA MARSH

Hon. Robert J. Jonker  
Case No. 1:13-cv-00969

Plaintiff,

v

SELENE FINANCE, L.P.

Defendant.

Michael O. Nelson (P23546)  
Attorney for Plaintiff  
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Grand Rapids, MI 49503  
(616) 559-2665  
[mike@mnelsonlaw.com](mailto:mike@mnelsonlaw.com)

Trott & Trott, P.C.  
By: Caren A. Ries (P73241)  
Attorneys for Defendant  
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DEFENDANT'S ANSWER TO PLAINTIFF'S  
VERIFIED COMPLAINT

Trott & Trott, P.C.

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NOW COMES Defendant, Selene Finance LP ("Selene"), by and through its attorneys, Trott & Trott, P.C., by Caren A. Ries and for its Answer to Plaintiff's Verified, states as follows:

1. Plaintiff is an individual who reside in Boston Township, Ionia County, Michigan.

ANSWER: Selene neither admits nor denies the allegations contained in this paragraph for the reason that it lacks sufficient information or knowledge to form a belief as to the truth of the allegations.

2. Defendant is a Delaware limited partnership doing business in Ionia County.

ANSWER: Selene admits that it is a Delaware Limited Partnership. Selene neither admits nor denies the balance of the allegations contained in this paragraph for the reason that it lacks sufficient information or knowledge to form a belief as to the truth of the allegations.

3. This action concerns real property located in Ionia County, Michigan, specifically: 5779 Culperr, Lowell, Michgain, permanent parcel no. 020-300-000-013-00, described as

Unit 13, Churchill Estates Condominium, a condominium according to the Master Deed recorded in Liber 585., Page 6695 of Ionia County Records and designated as Ionia County Condominium Subdivision Plan Number 39, and any amendments thereto, together with an undivided interest in the common elements of said condominium as set forth in the Master Deed and any amendments thereto, and as described in act 59 of public acts of Michigan of 1978, as amended.

ANSWER: Selene neither admits nor denies the allegations contained in this paragraph for the reason that it lacks sufficient information or knowledge to form a belief as to the truth of the allegations.

4. In December 2010, plaintiff executed a mortgage on the property in favor of Mortgage Electronic Registration Systems

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ANSWER: Selene neither admits nor denies the allegations contained in this paragraph for the reason that it lacks sufficient information or knowledge to form a belief as to the truth of the allegations. Answering further, no exhibits are attached to plaintiffs' summons and complaint.

5. Upon information and belief, the mortgage was assigned to defendant Selene Finance LP.

ANSWER: Selene admits that it is the current record-holder of Plaintiff's Mortgage by way of a validly executed and recorded Assignment of Mortgage. Answering further, no exhibits are attached to plaintiffs' summons and complaint.

6. In October, 2012, plaintiff experienced financial difficulty and fell behind in her mortgage payments.

ANSWER: Selene neither admits nor denies the allegations contained in this paragraph for the reason that it lacks sufficient information or knowledge to form a belief as to the truth of the allegations.

7. In early February, 2013, plaintiff was contacted by defendant Selene Finance and was told that she might be eligible for a loan modification or other alternative to foreclosure.

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ANSWER: Selene neither admits nor denies the allegations contained in this paragraph for the reason that it lacks sufficient information or knowledge to form a belief as to the truth of the allegations.

8. On or about February 12, 2013, plaintiff provided the requested documents to Selene as she had been instructed.

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ANSWER: Selene neither admits nor denies the allegations contained in this paragraph for the reason that it lacks sufficient information or knowledge to form a belief as to the truth of the allegations.

9. On or about March 4, 2013 plaintiff received a letter from Alicia Vitovsky at Selene. The letter stated that Vitovsky had been assigned as plaintiffs “single point of contact at Selene.” and was prepared to “determine the best court of action for you.”

ANSWER: Selene neither admits nor denies the allegations contained in this paragraph for the reason that it lacks sufficient information or knowledge to form a belief as to the truth of the allegations. Answering further, no exhibits are attached to plaintiffs’ summons and complaint.

10. On or about March 8, 2013, plaintiff received a letter from Trott and Trott stating that plaintiff may contact Trott and Trott or a housing counselor and arrange a meeting to discuss a possible loan modification.

**TROTT & TROTT, P.C.**

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ANSWER: Selene neither admits nor denies the allegations contained in this paragraph for the reason that it lacks sufficient information or knowledge to form a belief as to the truth of the allegations. Answering further, no exhibits are attached to plaintiffs’ summons and complaint.

11. At that time, plaintiff was still dealing with Alicia Vitovsky at Selene in attempt to arrange a loan modification. Plaintiff was told that she should continue to deal with Selene rather than Trott and Trott.

ANSWR: Selene neither admits nor denies the allegations contained in this paragraph for the reason that it lacks sufficient information or knowledge to form a belief as to the truth of the allegations.

12. Plaintiff relied on defendant's representations that defendant was working on a loan modification and that the proper avenue for plaintiff to apply for and obtain a loan modification was through Ms. Vitovsky and her successors.

ANSWER: Selene neither admits nor denies the allegations contained in this paragraph for the reason that it lacks sufficient information or knowledge to form a belief as to the truth of the allegations.

13. Plaintiff's reliance on defendant's representations was reasonable

ANSWER: Selene neither admits nor denies the allegations contained in this paragraph for the reason that it lacks sufficient information or knowledge to form a belief as to the truth of the allegations.

14. Plaintiff continued to deal with Selene in attempt to arrange a loan modification. Plaintiff completed and mailed requested documentation to Selene on a number of occasions. On or about April 22, 2013, plaintiff

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received a letter from Selene acknowledging plaintiff's request about "alternatives to foreclosure."

ANSWER: Selene neither admits nor denies the allegations contained in this paragraph for the reason that it lacks sufficient information or knowledge to form a belief as to the truth of the allegations. Answering further, no exhibits are attached to plaintiffs' summons and complaint.

15. Plaintiff continued to speak with and send documents to Selene until June 11, 2013. During that time, plaintiff spoke with at least six different representatives of Selene and was always told that Selene was considering or working on a loan modification.

ANSWER: Selene neither admits nor denies the allegations contained in this paragraph for the reason that it lacks sufficient information or knowledge to form a belief as to the truth of the allegations.

16. On June 11, 2013, plaintiff was told, by Selene, that her request for a loan modification was denied and that the property had been sold at foreclosure sale in May.

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ANSWER: Selene neither admits nor denies the allegations contained in this paragraph for the reason that it lacks sufficient information or knowledge to form a belief as to the truth of the allegations.

17. Upon information and belief, plaintiff believes that Selene's representations that it was considering and working on a loan modification were not true.

ANSWER: Selene neither admits nor denies the allegations contained in this paragraph for the reason that it lacks sufficient information or knowledge to form a belief as to the truth of the allegations. Answering further, Selene states that it actively reviewed plaintiff for a loan modification; however, Plaintiff did not return the necessary requested financial information.

18. As a result of defendant's false assurances that it was pursuing a loan modification, plaintiff was denied the opportunity to meet with an agent of the mortgagor and obtain a loan modification or consideration for a loan modification as required by MCL 600.3205c.

ANSWER: Denied for the reason it is untrue.

19. As a result of defendant's false assurances that it was pursuing a loan modification, plaintiff was also denied the opportunity to pursue other means to save her home from foreclosure, including a Chapter 13 Bankruptcy proceeding, a short sale or a loan to bring the mortgage up to date.

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ANSWER: Denied for the reason it is untrue.

20. On May 16, 2013, defendant conducted a foreclosure sale and defendant was the purchaser at the sale.

ANSWER: Admitted.

21. Defendant is equitably estopped from proceeding with a foreclosure on plaintiff's home because defendant induced the plaintiff to continue to deal with its employees, and forgo other means to avoid foreclosure, under the reasonable belief that defendant was working on a loan modification when, in fact, defendant was proceeding with foreclosure at the same time.

ANSWER: Denied for the reason it is untrue.

22. On July 2, 2013, defendant executed an affidavit claiming that the property was not occupied, in apparent attempt to deny plaintiff her legal 6 month redemption period.

ANSWER: Selene neither admits nor denies the allegations contained in this paragraph for the reason that it lacks sufficient information or knowledge to form a belief as to the truth of the allegations.

23. Defendant's affidavit is false as plaintiff has continually occupied the property and it is obvious, upon inspection, that the property is occupied.

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ANSWER: Selene neither admits nor denies the allegations contained in this paragraph for the reason that it lacks sufficient information or knowledge to form a belief as to the truth of the allegations.

WHEREFORE, Defendant requests that this court deny the relief requested, dismiss the Complaint in its entirety with prejudice and with attorneys' fees to Defendant.

**AFFIRMATIVE AND/OR SPECIAL DEFENSES**

1. Defendant will rely upon all Affirmative Defenses available pursuant to FRCP 8 and FRCP 9.
2. Defendant reserves the right to file a Counter-Claim, Cross-Claim or Third-Party Complaint, if appropriate, and as discovery dictates.
3. Plaintiff has failed to state a claim upon which relief can be granted.
4. Service of process has not been properly effectuated.
5. Plaintiff's Complaint is barred as Plaintiff has unclean hands.
6. Plaintiff's Complaint is barred due to the applicable statute of frauds.
7. Plaintiff's Complaint is barred due to the doctrine of laches.
8. Plaintiff's Complaint is barred due to the applicable statute of limitations.
9. Plaintiff's Complaint is barred because the Plaintiff has failed to mitigate her damages, if any.
10. Plaintiff's Complaint is barred as there is no genuine issue of any material fact.
11. Plaintiff's Complaint is barred as the Plaintiff breached the terms and conditions of the mortgage agreement.
12. Plaintiff's Complaint is barred for failure to name the proper parties in interest.
13. Plaintiff's Complaint is barred by res judicata.

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14. Defendant asserts and will rely upon any and all defenses contained in the pre-existing Mortgage and Note as it pertains to this matter.

15. Plaintiff's Complaint is in violation of FRCP 11.

16. Defendant will rely upon any affirmative defense to any alleged violation of any state or federal statute, provision, rule or regulation contained therein or in the common law interpreting same as it relates to this matter presently before this court.

17. Defendant has acted reasonably in all aspects of its servicing of the Mortgage in the matter presently before this court.

18. That all of the agreements, transactions and conduct of the Defendant were appropriate and legal.

19. Defendant reserves the right to amend and/or supplement its defenses, as they become known through discovery or otherwise.

Respectfully submitted,  
Trott & Trott, P.C.

BY: /s/ Caren Ries  
Caren A. Ries (P73241)  
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Trott & Trott, P.C.

Dated: September 10, 2013

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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THERESA MARSH

Hon.

Case No.13-969

Plaintiff,

Lower Case No.

2013-H-30091

Hon: David A. Hoort

v

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SELENE FINANCE, L.P.

Defendant.

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CERTIFICATE OF SERVICE

Joann Dedeluk hereby certifies that on September 10, 2013, she sent via First Class Mail, a copy of the *Defendant's Answer to Plaintiff's Verified Complaint, Affirmative and/or Special Defenses* and this *Proof of Service* to:

Michael O. Nelson  
1104 Fuller NE  
Grand Rapids, MI 49503

I declare under penalty of perjury that the statement above is true to the best of my information, knowledge, and belief.

/s/ Joann Dedeluk

Joann Dedeluk

Legal Assistant

Trott & Trott, P.C.

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Dated: September 10, 2013